IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

OP.No. 38579 of 2002(P)

PETITIONER:

ALL KERALA UNAIDED TRAINING COLLEGE TEACHERS ASSOCIATION, MUVATTUPUZHA (AFFILIATED WITH REG NO.0734/99) REPRESENTED BY ITS PRESIDENT A.MOHAMMED BASHEER.

BY ADV. SRI.K.JAJU BABU,
SMT.M.U.VIJAYALAKSHMI.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

2. **NATIONAL COUNSEL OF TEACHER EDUCATION REPRESENTED BY ITS REGIONAL DIRECTOR, SOUTHERN REGIONAL COMMITTEE, C.S.D.BUILDING, 1ST FLOOR, H.M.T. P.O., BANGALORE - 560032.**

3. **UNAIDED TRAINING COLLEGE MANAGEMENT ASSOCIATION, P.O.MELMURI, MALAPPURAM - 676 314, REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI.V.M.KURIAN, SC, SRC-NCTE,
SRI.ALIAS M.CHERIAN,
GOVERNMENT PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

ORDER ON C.M.P. NO. 65079/2002 IN O.P. NO. 38579/2002

DISMISSED

20/08/2007. **SD/- THOTTATHIL. B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGEMENT DTD. 10/10/2000 IN O.P. NO. 25550/2000 OF THIS HONOURABLE COURT.

EXT.P.2: COPY OF THE GOVT. ORDER DTD. 26/09/2001, VIDE NO. G.O. (MS) 119/200/H. EDN. ISUED BY THE R.1.

EXT.P.3: COPY OF THE ORDER NO. 22385/B3/2002/H. EDN. DTD. 07/09/2002, ISSUED BY THE R.1.

EXT.P.4: COPY OF THE LETTER NO. F. SRO/NCTE/2002 2003/3290 DTD. 12/1/2002, ISSUED BY THE R.2.

EXT.P.5: COPY OF THE RELEVANT EXTRACT OF REPORT OF THE MEMBER PUBLISHED IN THE COLLEGE MAGAZINE.

EXT.P.6: COPY OF THE STATEMENT OF ACCOUNT IN RESPECT OF M/S. T. BABY JOHN, C. JAYALATHA, K.G. SUBHAKUMARI, K.G. SUNEEHA AND G.S. PRIYA.

EXT.P.7: COPY OF THE REPRESENATION SUBMITTED BY M/S. T. BABY JOHN, C. JAYALATHA, K.G. SUBHA KUMARI, K.G. SUNEETHA AND G.S. PRIYA AND OTHER 2 TEACHERS BEFORE THE HONOURABLE VICE CHANCELLOR OF M.G UNIVERSITY DTD. 20/07/2002.

EXT.P.8: COPY OF THE MINUTES OF THE MEETING WITH THE MANAGEMENT OF THE H.M TRAINING COLLEGE AND THE COLLEGE TEACHERS HELD ON 02/08/2002.

prv.

O.P. NO. 38579/2002:

RESPONDENT'S EXHIBITS:

EXT.R1.A: G.O. (MS). 20/2001/H. EDN. DTD. 20/02/2001.

EXT.R1.B: REPORT OF THE COMMITTEE ON THE SCALES OF PAY AND OTHER CONDITIONS OF SERVICE OF THE STAFF OF UNAIDED COLLEGES.

EXT.R1.C: REPRESENTATION SUBMITTED BY THE MANAGEMENTS TO THE HONOURABLE MINISTER FOR EDUCATION.

EXT.R1.D: G.O. (MS) 153/95/H. EDN. DTD. 27/09/1995.

EXT.R3.1: COPY OF THE ORDER NO. KL-SEC-11/SRO/N CTE/2000-2001/1566 DTD. 14/08/2000.

EXT.R3.2: COPY OF THE LETTER NO. AC.AI/1/2297/2001 DTD. 20/11/2001.

EXT.R3.3: COPY OF THE ORDER NO. AC.AI/1/549/2001 DTD. 01/10/2001.

EXT.R3.4: COPY OF THE 34277/B4/01/H. EDN. DTD. 13/12/2001.

EXT.R3.5: COPY OF THE ORDER NO. GO (MS) 109/2001 H. EDN. DTD. 11/09/2001.

EXT.R3.6: COPY OF THE STAY ORDER DTD. 17/05/2002 IN CMP. NO. 21342/202 IN O.P. NO. 12542/2002.

EXT.R3.7: COPY OF THE LETTER NO. F. SRO/NCTE/2002-2003/6005 DTD. 24/02/2003.

EXT.R3.8: COPY OF THE LAWYERS NOTICE DTD. 01/02/2003.

EXT.R3.9: COPY OF THE REPLY LAWYERS NOTICE DTD. 20/02/2003.

EXT.R3.10: COPY OF THE MINUTES OF THE MEETING DTD. 02/08/2002.

//TRUE COPY//

P.S. TO JUDGE

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.38579 of 2002-P

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Dated this the 20th day of August, 2007.

JUDGMENT

With the passage of time, the field of University education in Kerala has undergone a change with the State recognizing the concept of unaided colleges. The University Laws (Amendment) Act, 1995, Act 9/95, was enacted in that backdrop to provide special provisions in respect of unaided colleges. Until then, all colleges in the private sector, if they are affiliated to one of the Universities, are required to follow relevant University Laws, including regarding the scale of pay on which payments have to be made to the teachers and the non-teaching staff. By the amendment brought in by the aforesaid Act, the applicability of the other provisions in the University Laws was taken away to the extent provisions are made by the Amending Act. Thereby, among other things, the scales of pay of the

teaching and non-teaching staff of unaided colleges, shall be determined from time to time, by the Government on the basis of recommendations of a Committee constituted by the Government in terms of the amended law. The fees payable by the students of such colleges also came to be under the regulation of the Government on the basis of the advice of that Committee. The composition of the Committee is also stipulated in the enactment.

2. Following the aforesaid legislation, the Government issued GO(Rt.)No.774/95/H.Edn. appointing the Committee as required in terms of that statute and on the basis of which recommendations, GO(MS).153/2001/H.Edn. was issued. Those Government Orders related to unaided colleges. Thereafter, GO(MS).20/2001/H.Edn. was issued by the Government re-constituting a Committee to determine the scale of pay etc. as applicable to unaided training colleges. On the basis of the recommendations of that Committee, Government issued Ext.P2 fixing the rates.

3. The allegation of the petitioner is that thereafter, the Government with no rhyme, reason or authority, have issued Ext.P3, a letter clarifying Ext.P2 Government Order by stating that the revision made thereby fixes the emoluments as consolidated amounts and not minimum scale of pay.

4. Apart from the fact that the petitioner was not heard in the matter, a plain reading of Ext.P2 excludes the conclusion arrived at in Ext.P3 Government letter. This is because, the amending Act gives the Government the power to fix the scales of pay and not merely consolidated amounts as pay. That apart, as discernible from the third paragraph of Ext.P2, the Government constituted the Committee to determine “the scale of pay”. What was ordered as per Ext.P2 is revision. Under the two different items, Emoluments of Principal and Emoluments of teachers, the word “minimum” is used in brackets. This means that the

rate proposed as per Ext.P2 is the minimum of the emoluments of the Principal and teachers.

5. While the learned counsel for the third respondent contends that such fixation is the minimum of the emoluments that has to be compulsorily paid, it was left to the wisdom of the individual management to peg the total emoluments at any particular upper limit and such an exercise may reflect a scale of pay. But the prescription of the legislation is that a scale of pay shall be fixed. Time scale of pay is the manner of determining the total emoluments due to an employee at a given point of time. This is the manner in which the emoluments are determined with reference to the University Laws which were amended by the amending Act. Therefore, the mandate of the legislature contained in the amending Act does not appear to be a situs for exercise of Governmental power to prescribe a consolidated amount as emoluments, while it is required to act on the advice of the Committee, in the manner of fixing

the scale of pay.

6. The learned counsel for the third respondent points out that with the passage of time, the situation has undergone a sea-change and as of now, the total number of unaided training colleges in the State would find it difficult even to reach at qualified hands as teachers, which situation would result in the management offering competitive higher pay packages to reach at qualified hands.

7. At any rate, the fact remains that the impugned decision was taken without any opportunity of hearing to the teachers. As of now, on the basis of the interim orders, the teachers are enjoying the benefits without reference to the impugned Ext.P3.

Under the aforesaid circumstances, this writ petition is disposed of directing that the Government shall, within an outer limit of four months from now, re-consider the entire

issue with the advice of the Committee which it is required to take from time to time and shall decide on the scales of pay which have to be prescribed in terms of the statutory prescriptions brought in to the University Laws as per the amending Act, namely, Act 9/1995. The petitioner and the third respondent shall be given sufficient opportunity of hearing before such a decision is taken.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 20th August, 2007.